Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

NO. 351

PITTSBURGH TERMINAL REALIZATION CORPORATION, Petitioner,

v.

WILLIAM G. HEENER, Trustee of Pittsburgh Terminal Coal Corporation, Debtor, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Pittsburgh Terminal Realization Corporation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case, there entitled *In the Matter of Pittsburgh Terminal Coal Corporation,* on July 17, 1950.

OPINIONS BELOW.

No opinion was filed by the District Court. The opinion of the Court of Appeals (R. 65-70) is reported in 183 F. 2d 520.

JURISDICTION.

The judgment of the Court of Appeals was entered on July 17, 1950 (R. 63). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Sec. 1254.

QUESTION PRESENTED.

Whether a federal bankruptcy court, in a corporate reorganization proceeding, has jurisdiction, after confirmation and consummation of the plan of reorganization, to intervene in the internal affairs of the successor corporation by enjoining a meeting of its shareholders.

STATUTE INVOLVED.

Bankruptcy Act, Chapter X, 52 Stat. 883, 11 U.S.C. Sec. 501 *et seq.* (Chandler Act).[1]

STATEMENT.

On November 2, 1949, the board of directors of Pittsburgh Terminal Realization Corporation, a Pennsylvania business corporation incorporated in 1944, adopted a resolution proposing certain amendments (Appt. 32a)[2] to the by-laws of the corporation and calling a special meeting of its shareholders, to be held on

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1. The opinion of the Court of Appeals (R. 65-70), which holds that Chapter X confers jurisdiction upon the reorganization court, does not refer to any specific section of the chapter.

2. The appendixes to the briefs of the appellant and appellee in the court below are designated as "Appt." and "Appee.", respectively.

December 12, 1949, for voting upon the question of adopting the proposed amendments. Notice of the special meeting (Appt. 31a) setting forth the proposed amendments in full was duly sent to all shareholders of record.[3]

On December 7, 1949, William G. Heiner, as trustee of Pittsburgh Terminal Coal Corporation, a then non-existent[4] corporation which had been the debtor in a corporate reorganization proceeding from which Pittsburgh Terminal Realization Corporation emerged as the successor corporation under the consummated plan of reorganization, presented a petition (Appt. 37a-47a) to the federal bankruptcy court averring that the adoption of the proposed amendments by the shareholders of the Realization Corporation without the consent and approval of the federal court would be unlawful, and praying for an order enjoining the shareholders meeting of

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3. As indicated in the explanatory letter (Appt. 33a-36a) accompanying the notice, the purpose of the proposed amendment extending the duration of the corporation's existence for a further term of five years was to permit disposal of its remaining assets by orderly liquidation with maximum realization, rather than by forced sale at sacrifice prices; and the purpose of the proposed amendment removing the limitation of $5,000 on the total compensation payable annually to all officers and directors together was to permit the payment of fair compensation in order to retain competent management for the corporation.

4. On December 7, 1949, the debtor's corporate existence had ceased five years before, all of its creditors had been paid in full, and the trustee's only unperformed duties were to file his account and to pay over to Pittsburgh Terminal Realization Corporation any remaining balance in accordance with the order of consummation entered on March 23, 1945. (Appt. 24a)

the Realization Corporation and authorizing him, Heiner, to investigate the conduct of its business and affairs.

The reorganization of the debtor, Pittsburgh Terminal Coal Corporation, had been commenced on December 4, 1939 (Appt. 1a) by a creditor's petition under Chapter X of the Bankruptcy Act. The debtor, which was placed under trusteeship by the court, had owned and operated ten coal mines in Western Pennsylvania, together with miners' villages, general stores, and retail coal yards. While litigation in behalf of the debtor's estate was pending, the trustee sold the debtor's remaining operating mine (Appt. 41a) and the bulk of its mining machinery and equipment. (Appt. 37a). There remained extensive real estate holdings. The litigation was finally settled in 1944 by an agreement that was made part of the plan of reorganiation subsequently confirmed by the court on December 19, 1944. (Appt. 1a). The plan provided for the cash payment in full of all allowed claims against the debtor, and for the exchange, for each share of preferred stock of the debtor, of a cash distribution plus one share of stock of a successor corporation, to be organized and to which the remaining assets of the debtor were to be transferred. (Appt. 5a). The plan further provided that the initial by-laws of the successor corporation should contain provisions limiting the duration of the corporation's existence and the total amount of compensation payable annually to its officers and directors, and requiring an affirmative vote of two-thirds of its shareholders for approval of amendments to its by-laws. (Appt. 14a) After the successor corporation, Pittsburgh Terminal Realization Corporation, had been duly organized under

the Pennsylvania Business Corporation Law[5] on December 28, 1944, the court, on March 23, 1945, entered an order (Appt. 19a-28a) directing that April 15, 1945 be the effective date of consummation of the plan. The order of consummation expressly approved the articles of incorporation and by-laws of the successor corporation as being in compliance with the plan,[6] and directed that any remaining balance in the hand of the trustee be paid over by him to the successor corporation.[7] Thereupon, the exchange of preferred shares of the debtor for cash plus shares of the successor corporation was made; the trustee of the debtor transferred by deed and bill of sale the remaining real and personal property of the debtor to the successor corporation; cash was set aside for the payment in full by the trustee of all allowed creditors of the debtor; and, in September, 1945, the trustee of the debtor and his counsel petitioned for and were allowed and paid their final fees and allowances to the termination of the reorganization proceeding. (Appee. 57a)

During the period of almost five years from April 15, 1945, the effective date of the consummation of the

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5. Pa. Act of May 5, 1933, P. L. 364, 15 Purdon Stat. Sec. 2852.

6. "The court is satisfied and hereby finds that the foregoing documents and instruments and the terms and provisions thereof are in substantial compliance with the terms and provisions of the Plan and are necessary and appropriate for the consummation of the Plan. The court hereby approves the forms, terms, provisions and conditions of said documents and instruments".

7. "(8) The Trustee is hereby authorized, ordered and directed to make the payments hereinabove set forth and pay all claims pursuant to the Plan and any balance remaining shall be paid over to the Reorganized Company for distribution to its stockholders." (Appt. 24a)

plan, until December 7, 1949, when Heiner presented his petition to the district court for the order appealed from, Pittsburgh Terminal Realization Corporation had been (and still is) conducting its affairs[8] in accordance with law and in accordance with its charter and by-laws as initially approved by the court,[9] and had been (and still is) completely solvent and able to meet its debts as they mature.[10]

On December 7, 1949, the same day that Heiner presented his petition for the order appealed from, the Securities and Exchage Commission, a party to the reorganization proceeding under section 208 of the Bankruptcy Act, presented a petition (Appee. 27a-41a) to the reorganization court for an order authorizing an investigation of alleged trading activities in the shares of the debtor by members of a so-called "group" associated with Alexander Guttmann, president of the Realization Corporation and formerly chairman of a stockholders committee in the reorganization of the debtor.[11]

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8. Annual meetings of its shareholders were held, at which members of the board of directors were elected, and annual reports, including complete financial statements and audits by independent certified public accountants, were submitted to its shareholders.

9. See footnote 6, *supra*.

10. On December 7, 1949, when Heiner's petition was filed, Pittsburgh Terminal Realization Corporation had assets of $441,000, of which $68,000 was in cash, against total liabilties of $25,000. (Appt. 33a)

11. Alexander Guttmann and members of his so-called "group" had filed a statement of their shareholdings under Sec. 211 on April 10, 1940, and, in December, 1944, had filed proofs of interest in connection with voting on the plan of reorganization. (Appee. 35a)

Subsequently, in its order of March 23, 1945, the

On December 9, 1949, two days after the filing of the petitions of Heiner and of the Securities and Exchange Commission,[12] and before answers[13] thereto or briefs could be prepared, Judge Burns[14] of the district court entered both orders. Pittsburgh Terminal Realization Corporation appealed to the Court of Appeals from the order entered on petition of Heiner, but no appeal has been taken from the order entered on petition of the Securities and Exchange Commission.

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court expressly approved the election of Alexander Guttmann and two other members of his "group" as the initial officers of the Realization Corporation as follows:

"5. The selection of the initial Board of Directors of the Reorganized Company heretofore approved by the Court, of the following to the offices opposite their respective names, is hereby approved by the Court:

President:	Alexander Guttmann
Vice Pres.:	J. Louis Geller
Secretary & Treasurer:	Arthur H. Bainton."

(Appt. 21a)

12. No notice of the petitions was given to Pittsburgh Terminal Realization Corporation, either by Heiner or by the Securities and Exchange Commission, until after they were presented and filed in court on December 7, 1949.

13. The charges and insinuations of misconduct made against the management of the Realization Corporation were completely unfounded, as is evidenced by the failure of a single shareholder to join in Heiner's action at the time it was brought or in the ten months since, and by the re-election to office of the same management by vote of over 90% of the outstanding shares at the annual shareholders meeting in May, 1950.

14. The entire reorganization proceeding, from its initiation in 1939 to its consummation in 1945, had been conducted by the late Judge Gibson, who retired in January, 1949.

The court below affirmed the order of the district court, holding that the bankruptcy court, despite confirmation and consummation of the plan of reorganization, retained jurisdiction over the internal affairs of the successor corporation by reason of the fact that no final decree had been entered in the proceeding for the reorganization of the debtor.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In holding that the federal bankruptcy court had jurisdiction over the internal affairs of the successor corporation after confirmation and consummation of the plan of reorganization.

2. In failing to hold that confirmation and consummation of the plan of reorganization terminated jurisdiction of the bankruptcy court over the internal affairs of the successor corporation.

3. In affirming the order of the district court.[15]

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15. If certiorari is granted, it will also be urged that the court below erred in holding that the trustee of the debtor had a right or duty to supervise the affairs of the successor corporation, and in holding that approval of the bankruptcy court was necessary to the adoption of the proposed amendments by the shareholders of the successor corporation.

REASONS FOR GRANTING THE WRIT.

1. The decision of the court below is in direct conflict with the decision of the Court of Appeals for the First Circuit in *Town of Agawam v. Connors,* 159 F. 2d 360, cert. den. 330 U.S. 845, and with the decision of the Court of Appeals for the Second Circuit in *Reese v. Beacon Hotel Corp.,* 149 F. 2d 610.

The court below rested its decision of the question of jurisdiction of the bankruptcy court over the successor corporation upon the absence of a final decree, saying, in its opinion by Judge McLaughlin (R. 67):

> "The law unquestionably is that the retention by the bankruptcy court of jurisdiction over the reorganized debtor, or, as in this instance, its successor corporation, depends upon the particular facts. In the case before us the trustee has not filed his final account *and no final decree has been entered.* (Emphasis added)

In the *Agawam* case, the same question—whether the bankruptcy court retained jurisdiction because of the absence of a final decree—was decided oppositely to the decision of the court below by the First Circuit Court of Appeals. In that case, after consummation of the plan of reorganization, but before a final decree had been entered, the federal bankruptcy court refused for lack of jurisdiction to enjoin the foreclosure by a Massachusetts Land Court of the reorganized corporation's principal asset for local real estate tax claims. In affirming, the First Circuit Court of Appeals, speaking through Chief Judge Mahoney, stated the question and its decision as follows (p. 363):

"Our question, therefore, is whether or not the jurisdiction of the Bankruptcy Court in the reorganization proceedings terminated *inasmuch as no final decree was ever entered.* If they had not terminated, serious doubt would exist as to the ability of the Land Court to assume jurisdiction over property under the jurisdiction and control of the Federal Court in reorganization proceedings. We conclude from an appraisal of the authorities cited to us that termination of jurisdiction in such a case need not await the entry of a final decree and that *confirmation and consummation of the plan of reorganization suffice to effect a release of the reorganized corporation's property from the jurisdiction of the Bankruptcy Court*". (Emphasis added)

The First Circuit holding in the *Agawam* case, that the bankruptcy court lacked jurisdiction, was made on authority of the decision of the Second Circuit Court of Appeals in *Reese v. Beacon Hotel Corp.*, 149 F. 2d 610.

In the *Reese* case, the bankruptcy court had inserted a clause in its order of confirmation expressly reserving jurisdiction to approve any leases made by the successor corporation of a theater that had been the principal asset of the debtor and that had been transferred to the successor corporation under the plan of reorganization. Pursuant to this reserved jurisdiction, the bankruptcy court had, on petition of the successor corporation and over objections of a former stockholder of the debtor, entered an order approving a lease of the theater. This order was reversed by the Second Circuit Court of Appeals for lack of jurisdiction of the bankruptcy court over the affairs of the successor corporation, notwithstanding the fact that the disposition of

the theater had been the primary purpose of the plan of reorganization and notwithstanding the clause reserving jurisdiction. In the opinion of the court, by Judge Augustus N. Hand, (p. 611):

> "We shall not discuss the merits of the lease or the technical objections which are raised, such as lack of notice to the security holders or the summary character of the proceeding, *for it is plain that the court was without jurisdiction to approve or disapprove the proposed lease under the reservation of power in the order of February 4, 1938.* We have repeatedly held that reservation of jurisdiction beyond what is requisite to effectuate a plan of reorganization is beyond the power of the reorganization court. *Towers Hotel Corporation v. Lafayette National Bank,* 2 Cir., 148 F. 2d 145; *North American Car Corporation v. Peerless W. & V. Mach. Corporation,* 2 Cir., 143 F. 2d 938; *In re Flatbush Ave.—Nevins St. Corporation,* 2 Cir., 133 F. 2d 760; *Bakers Share Corporation v. London Terrace,* 130 F. 2d 157; *In re Ambassador,* 2 Cir., 124 F. 2d 435." (Emphasis added)[16]

In view of the conflict between the decisions of the First and Second Circuits on one hand and the decision of the Third Circuit in the case at bar on the other hand, a settlement of the dispute by the Supreme Court appears to be necessary.

2. The question of when the bankruptcy court ceases to have jurisdiction over the reorganized or suc-

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16. In the case at bar, the bankruptcy court had not even attempted in any prior order to reserve jurisdiction to approve future amendments to the by-laws of the successor corporation.

cessor corporation is of fundamental importance, and its determination is vital to the proper administration of corporate reorganizations under the Bankruptcy Act.

Every successful corporate reorganization necessarily results in a reorganized or successor corporation, and, therefore, every such reorganization necessarily carries with it the question of when the jurisdiction of the bankruptcy court over the reorganized or successor corporation ceases. It is also of paramount importance to the shareholders of every solvent reorganized corporation to know whether their power to amend by-laws and otherwise control the destinies of their corporation is subject to the approval of the federal court which supervised the reorganization proceeding.

3. The decision of the court below sustaining the jurisdiction of the bankruptcy court is based upon a construction of the Bankruptcy Act that is erroneous and violative of the Tenth Amendment to the Constitution.

A district court sitting in a reorganization proceeding is a court of bankruptcy, and, as such, possesses only the jurisdiction and powers that are accorded it by statute. *Matter of The Prima Co.* (C.A. 7, 1938) 98 F. 2d 952, cert. den. *sub nom. Keig v. Harris Trust & Savings Bank,* 305 U.S. 658. The principles governing the bankruptcy jurisdiction of federal courts were summarized as follows in *Town of Agawam v. Connors,* 159 F. 2d 360, cert. den. 330 U.S. 845, (p. 363):

> "The Constitution (Art. 1, Sec. 8, cl. 4) does vest Congress with paramount authority to make uniform laws concerning bankruptcies. When Con-

gress enacts a bankruptcy act that law is therefore supreme and, when the courts exercise jurisdiction conferred upon them by such a statute, they are exercising a paramount and exclusive jurisdiction. *But it is necessary that the jurisdiction so exercised be one within the powers conferred upon the courts and within the terms of the statute.*" (Emphasis added)

Chapter X grants to the reorganization court broad and comprehensive jurisdiction over the *debtor* and its property. But the jurisdiction granted over the successor corporation is not coextensive with the jurisdiction granted over the debtor,[17] as erroneously assumed by the court below. Chapter X's express definition of the term "debtor"[18] clearly does not include the successor corporation, and the term "debtor" is used in contradistinction to the successor corporation throughout the chapter.[19]

The construction of the Bankruptcy Act inherent in the decision of the court below—that a federal bankruptcy court has jurisdiction over the internal affairs

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17. Cf. *Prudence Realization Corp. v. Ferris,* 323 U.S. 650, 655: "Despite the fact that neither the bankruptcy court nor the reorganization statute professes to alter rights unless disclosed in the plan or in an order, we are asked to recognize some enveloping cloud of amenability to the law governing bankruptcy proceedings."

18. Sec. 106 (5): " 'debtor' shall mean a corporation by or against which a petition has been filed under this chapter;"

19. See Secs. 216, 221, 224, 226.

of a state corporation that is completely solvent and able to meet its debts as they mature[20]—is violative of the Tenth Amendment as an infringement of state sovereignty. It is well settled that the federal bankruptcy jurisdiction, though extremely broad, is not unlimited. As stated by Mr. Justice Sutherland in *Continental Illinois National Bank & Trust Co. v. Chicago R. I. & P. Ry. Co.*, 294 U.S. 648, 669,

> "But while it is true that the power of Congress under the bankruptcy clause is not to be limited by the English or Colonial law in force when the Constitution was adopted, it does not follow that the power has no limitations."

Congress, in enacting Chapter X, was cognizant of the constitutional limitation, and was careful not to infringe on state jurisdiction over the successor corporation. A clause conferring on the successor corporation "full power and authority to put into effect and carry out the plan" was not incorporated in Chapter X because it was felt that this provision "might be construed to confer such power, regardless of the limitations of a state corporation law." Analysis of H. R. 12889, 74th Cong. 2d Sess. (1936) 80.

That the successor corporation in conducting its affairs is subject to state law and not to federal court

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20. The Supreme Court has on several occasions approved a definition of the subject of bankruptcies as being nothing less than "the subject of the relations between an insolvent or nonpaying or fraudulent debtor, and his creditors, extending to his and their relief." *Hanover Bank v. Moyses*, 186 U.S. 181; *Continental Illinois Bank & Trust Co. v. Chicago R. I. & P. Ry. Co.*, 294 U.S. 648, 672; *United States v. Bekins*, 304 U.S. 27, 47.

supervision was expressly declared in *In re Ambassador Hotel Corp.*, 124 F. 2d 435 (2 Cir. 1942), where the court said:

> "In selecting such a [state] corporation as an instrumentality of reorganization, the bankruptcy court sent it out into the state as fully subject to state law as though the court had had nothing to do with its creation."

And in *Bakers Share Corp. v. London Terrace, Inc.*, 130 F. 2d 157, (2 Cir. 1943), the court declared that a federal reorganization court

> "is not obliged to use a state corporation as its instrument at all; it may leave the debtor in possession of its property; but if it does choose to use one, it must take it with such powers as the state law sees fit to give it."

In the case at bar, the district court chose a Pennsylvania corporation as its instrument of reorganization. The laws of Pennsylvania give to every corporation organized thereunder the power to make and amend by-laws.[21]

The decision of the district court, affirmed by the court below, sustaining the contention in Heiner's petition that the by-laws of the successor corporation can-

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21. The Pennsylvania Business Corporation Law, Act of May 5, 1933, P. L. 364, 15 Purdon Stat. Sec. 2852, provides as follows:

> "Sec. 302. Subject to the limitations and restrictions contained in this act or in its articles, every business corporation shall have power: * * * (11) to make, alter, amend, and repeal by-laws, not inconsistent with its articles or with law, for the administration and regulation of the affairs of the corporation."

not "be lawfully changed by mere amendment approved by the stockholders and without the consent and approval of your Honorable Court" (Appt. 43a) means that the federal court has created in Pittsburgh Terminal Realization Corporation a new and peculiar species of corporation heretofore unknown in law, *i.e.*, a corporation whose stockholders must have the consent and approval of a federal court before they may vote on proposed amendments to their by-laws.[22]

That Chapter X intends the shareholders of the successor corporation to be free of supervision by the bankruptcy court was pointed out in *Knight v. Wertheim,* 158 F. 2d 838 (2 Cir. 1946), where the circuit court, in reversing the bankruptcy court's refusal to submit a proposed alteration of the plan to the shareholders after confirmation but before consummation, said (Judge Learned Hand) (p. 844):

> "It was for a majority of the shareholders, and for them alone, to decide whether they preferred to accept the chance of being able to pay the interest on the first mortgage; and if they chose to do so, the judge would not have been justified in interfering in their choice; it was a practical decision within the powers of the majority. Chapter X does not give to the bankruptcy court any larger supervision in such a situation than if the new company had been set up and sent on its way."

Aside from the fact that the charges of misconduct made against the management of the successor corpora-

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22. Proxies were returned by 91% of the outstanding shares of Pittsburgh Terminal Realization Corporation favoring the adoption of the enjoined amendments, and by none opposing.

tion are completely unfounded,[23] and aside from the elementary principle that the need for remedying a wrong does not of itself create jurisdiction in a court, there was not even an apparent need for exercise of jurisdiction by the federal bankruptcy court. Even if the charges had been well founded, the apparently non-existent "minority" shareholders of the Realization Corporation, in whose behalf Heiner purports to act, could, being *sui juris*, have sought relief without his unsolicited intervention. And, without recourse to the bankruptcy court, full and complete relief would have been available to them under Pennsylvania law by shareholders' suit in equity,[24] by *quo warranto* to test the right of any officer or director to hold his office,[25] and by *mandamus* to enforce the right to inspect the corporation's books.[26]

The decision of the court below is believed to be erroneous for the further reason that the adoption of the proposed amendments by the shareholders of the successor corporation was entirely proper and lawful. It has not been, and could not be, contended by the respondent that the proposed amendments or the procedure for their adoption violated any provision of the by-laws of the corporation as expressly approved by the reorganization court's order of consummation

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23. See footnote 13, *supra*.

24. *Malone v. Lancaster, Gas, Light & Fuel Co.*, 182 Pa. 309, 37 A. 932.

25. Pa. Act of June 14, 1836, P. L. 621, 12 Purdon Stat. Sec. 2022; *Deal v. Miller*, 245 Pa. 1, 90 A. 1070.

26. Pa. Act of June 8, 1893, P. L. 345, 12 Purdon Stat. Sec. 1913; *Taylor v. Eden Cemetery Co.*, 337 Pa. 203, 10 A. 2d 573.

(Appt. 20a) as being in compliance with the plan.[27] That order is *res judicata, Chicot Co. Dist. v. Baxter State Bank,* 308 U.S. 371, 378, *Prudence Realization Corp. v. Ferris,* 323 U.S. 650, 655, and can not be collaterally attacked in an action to enjoin the corporation from proceeding in accordance with its by-laws as therein approved.

The decision of the court below is believed to be erroneous for the still further reason that the trustee had no power or authority to present his petition for the order appealed from. *Reese v. Beacon Hotel Corp.,* 149 F. 2d 610. Even as trustee of the debtor, he was *functus officio.*[28] Clearly, Chapter X, which provides for the creation of the successor corporation upon consummation of the plan, and for the discharge of the trustee[29] upon consummation of the plan, does not con-

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27. The plan of reorganization provides as follows (Art. V):

"The Articles of Incorporation or By-Laws of the Reorganized Company, as is appropriate, shall provide that * * * (e) amendment of by-laws and amendment of the articles of incorporation shall each require the affirmative vote of the holders of at least two-thirds of the outstanding shares * * *" (Appt. 15a)

28. There were neither creditors nor shareholders of the debtor, and its corporate existence had ceased more than five years before.

29. "Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree * * * (2) discharging the trustee, if any."

Upon the failure of the trustee to petition for the entry of a final decree, it would have been proper for the reorganization court to enter a final decree *sua sponte. In re Elless Co.,* 174 F. 2d 925, cert. den. *sub nom. Blair v. Finan,* 338 U.S. 824.

template supervision of the successor corporation by the trustee.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 9, 1950.